

# ARKANSAS SUPREME COURT

No. CR 08-160

LEDELL LEE  
Appellant

v.

STATE OF ARKANSAS  
Appellee

Opinion Delivered March 19, 2009

PRO SE MOTION TO REMAND TO  
CIRCUIT COURT [CIRCUIT COURT  
OF PULASKI COUNTY, CR 93-1249,  
HON. JOHN W. LANGSTON, JUDGE]

MOTION MOOT IN PART AND  
DENIED IN PART.

## PER CURIAM

A jury found appellant Ledell Lee guilty of capital murder and sentenced him to death. This court affirmed. *Lee v. State*, 327 Ark. 692, 942 S.W.2d 231 (1997). Appellant sought and was denied postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.5. This court affirmed that order as well. *Lee v. State*, 343 Ark. 702, 38 S.W.3d 334 (2001). Appellant later filed a motion in this court for recall of the mandate as to his Rule 37.5 proceeding. We granted the motion. *Lee v. State*, 367 Ark. 84, 238 S.W.3d 52 (2006).

In accord with that decision, new attorneys were appointed to represent appellant, and following additional proceedings under Rule 37.5, the trial court again denied postconviction relief. Counsel for appellant lodged an appeal of that order in this court, which is still pending. Appellant has previously filed a pro se motion requesting the matter be remanded back to the trial court for further proceedings that we denied. *Lee v. State*, CR 08-160 (Ark. Sept. 18, 2008) (per curiam). Before us is another pro se motion in which appellant repeats the same request.

As in his previous pro se motion, appellant alleges that his new attorneys were ineffective

for limiting the issues to those raised by former counsel and failing to raise a number of claims, for failing to adequately investigate these claims or use information obtained from the investigation that was performed, and for failing to request certain scientific tests. Appellant again complains that counsel did not comply with his wishes in regard to these actions. In addition, appellant now requests that his attorneys be relieved, that new counsel be appointed, and that the matter be remanded for new proceedings on his Rule 37.5 petition. He contends that his attorneys have demonstrated that they are ineffective because they have been ordered to submit new briefs in the appeal and have requested additional time to prepare the brief. He complains that they have failed to contact him or keep him informed and that they were aware that he wished to pursue additional claims in the Rule 37.5 proceedings and failed to do so.

After appellant's first pro se motion requesting remand, this court twice ordered rebriefing in this appeal. *Lee v. State*, 375 Ark. 124, \_\_\_ S.W.3d \_\_\_ (2008) (per curiam); *Lee v. State*, \_\_\_ Ark. \_\_\_, \_\_\_ S.W.3d \_\_\_ (Jan. 22, 2009) (per curiam). Subsequently, we granted without written opinion a motion to be relieved filed by one of the two attorneys representing appellant. Appellant's request to relieve counsel as to that attorney, Danny W. Glover, is therefore moot. Gerald Coleman, the sole attorney now representing appellant, has filed a third brief and successfully moved to supplement the record.

While, as our opinion noted, we referred counsel to the Committee on Professional Conduct as a result of the second ordered rebriefing, we do not agree that the deficiencies in the brief's abstract and addendum demonstrated ineffective assistance or cause to relieve Mr. Coleman. Appellant has not been prejudiced by the briefing errors on Mr. Coleman's part, and Mr. Coleman, as of this date, remains a licensed attorney. The errors are not such as would demonstrate that Mr.

Coleman is not capable of perfecting the appeal on appellant's behalf.

As for those of appellant's complaints concerning counsel's performance during the Rule 37.5 proceedings in circuit court and his desire to initiate new Rule 37.5 proceedings with other counsel, our previous ruling stands. We noted in our decision on appellant's previous pro se motion that, at this stage in the proceedings, the issues raised in appellant's pro se pleadings are merely an attempt to substitute appellant's own judgment for that of his attorneys and compete with appointed counsel to be heard. An appellant is not entitled to accept appointment of counsel to represent him, and also proceed pro se. *Brewer v. State*, 371 Ark. 532, 268 S.W.3d 332 (2007) (per curiam). This court will not permit an appellant to compete with his attorney to be heard in an appeal. *Id.* The right to counsel does not provide the right to counsel who substitutes the judgment of the accused for his or her professional judgment. *Id.*

Nor do appellant's complaints as to counsel's lack of communication and failure to keep him adequately informed constitute a basis to relieve counsel or remand. As we pointed out in *Brewer*, consultation with an appellant, even on direct appeal, is not a right and counsel must assume professional liability for the conduct of the case. An accused is not guaranteed a meaningful attorney-client relationship or an exemplary rapport with his appointed attorney. *Id.*

Appellant has provided no basis either for this court to relieve Mr. Coleman or to remand to the trial court. Accordingly, we deny the motion to the extent that it is not moot.

Motion moot in part and denied in part.